

December 15, 1993
REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

KREISNER V. CITY OF SAN DIEGO
(Balboa Park Nativity Scene)

In 1988 Plaintiff filed suit alleging that the nativity display in Balboa Park was an unconstitutional establishment of religion. The United States District Court, Southern District of California, and the Ninth Circuit Court of Appeals have held that the allowance of a private display in the park does not violate the federal or California constitutional prohibitions against establishment of religion, but rather complies with the First Amendment free speech rights of citizens to erect a display in Balboa Park, an open forum.

In August 1993, the Ninth Circuit Court of Appeals denied Plaintiff's request for a rehearing. On November 1, 1993, the City was served with Plaintiff's Petition for Certiorari to the United States Supreme Court. The Petition for Certiorari did not address the merits of the case, but rather challenged the procedure followed by the appellate court and district courts in the case.

The City responded with a brief in opposition to the Petition for Certiorari, citing specific federal codes and cases which directly support the appellate and district courts' actions. The Supreme Court was asked to deny certiorari. We will notify you as soon as word is received whether the Court grants or denies certiorari. Copies of either brief are available at my office upon request.

Respectfully submitted,
JOHN W. WITT
City Attorney

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RC-93-54

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